

USERRA AMENDMENTS ACT OF 1998

MARCH 17, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STUMP, from the Committee on Veterans' Affairs,
submitted the following

R E P O R T

[To accompany H.R. 3213]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 3213) to amend title 38, United States Code, to clarify enforcement of veterans' employment and reemployment rights with respect to a State as an employer or a private employer, to extend veterans' employment and reemployment rights to members of the uniformed services employed abroad by United States companies, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 1, after line 2, insert the following new section (and redesignate the succeeding sections accordingly):

SECTION 1. SHORT TITLE.

This Act may be cited as the "USERRA Amendments Act of 1998".

Page 3, beginning on line 18, strike out "Attorney General" and insert in lieu thereof "United States".

Page 5, line 16, strike out "(2)".

INTRODUCTION

H.R. 3213 was introduced on February 12, 1998 by Mr. Quinn. Other cosponsors of the bill on the day it was introduced included Mr. Filner, Mr. Stump, Mr. Evans, Mr. Buyer, Mr. Kennedy of Massachusetts, Mr. Bachus, Mr. Mascara, Mr. Cooksey, Mr. Rodriguez, Mr. Olver, Mr. Pascrell, Ms. Waters, and Mr. Manton. The Subcommittee on Education, Training, Employment and Housing of the Committee on Veterans' Affairs held a hearing on May 30, 1996, (during the 104th Congress) on the subject of the applicability of the Uniformed Services Employment and Reemployment Rights Act (USERRA) to States as employers. The Subcommittee on Benefits held a hearing on July 16, 1997, during which a bill, H.R. 166, that is similar to H.R. 3213, was discussed.

SUMMARY OF REPORTED BILL

USERRA (Uniformed Services Employment and Reemployment Rights Act) is the continuation of policy originally enacted in 1940 (Pub. L. No. 76-96). Its purpose is to provide persons who serve for a limited period in the U.S. Armed Forces the right to return to civilian employment. This law applies to all employers, regardless of their size. The employment and reemployment rights provided under USERRA are particularly important today to persons serving in the Guard and Reserve.

This bill would substitute the United States for an individual veteran as the plaintiff in enforcement actions in cases where the Attorney General believes that a State has not complied with USERRA. Since the Attorney General, through U.S. Attorneys, is already involved in enforcing this law, the enactment of H.R. 3213 will not impose any new duties on the Attorney General. Individuals not represented by the Attorney General would be able to bring enforcement actions in state court.

The bill also makes a technical change to USERRA suggested by the Department of Labor concerning overseas employees of U.S. companies and another needed change affecting Federal employee enforcement rights that was discovered as a result of hearings held two years ago.

BACKGROUND AND DISCUSSION

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is the continuation of a national policy to encourage service in the United States Armed Forces by providing persons who serve for a limited period the right to return to civilian employment without adverse effect on their career progress. Originally enacted by Congress in 1940 (Pub. L. No. 76-96), the law applies to all employers, regardless of their size. Modified in 1986 to prohibit hiring discrimination against Reserve and National Guard members, it is particularly important today to such persons who are integral to this country's defense. Under the "Total Force" concept, members of the Guard and Reserve are frequently called to active duty to carry out missions integral to the national defense.

The 50 States and the District of Columbia employ a significant number of persons who also serve their country through service in the National Guard and the Reserve components of the military

services. Although disputes between state agencies and employees about the scope and meaning of USERRA and its predecessor laws (commonly referred to as Veterans Reemployment Rights (VRR) laws) have arisen from time to time, state employers regularly afford persons serving in the Armed Forces and Selected Reserve the rights guaranteed by these laws. Recently, however, several States have taken the position that the Eleventh Amendment to the Constitution makes USERRA inapplicable to state agencies. This argument is based on a 1996 Supreme Court decision (*Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S. Ct. 1114 (1996)) holding that Congress was prohibited by the Eleventh Amendment from allowing individuals to sue States for violating Federal statutes. At least two U.S. district courts have ruled in favor of defendant States in actions brought under USERRA since that 1996 decision.

The Eleventh Amendment to the United States Constitution provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

As one witness testified to Members of a VA subcommittee:

Although the text of the Eleventh Amendment may seem quite limited, the Supreme Court has long interpreted the Amendment to stand for a broad principle: the principle of state sovereign immunity from suit in federal court. The Supreme Court has held that the States, as sovereigns within our federal system of government, are not subject to suit in federal court without their consent.

Accordingly, even though the Amendment appears to be directed only to lawsuits brought against a state by citizens of another state (or citizens of a foreign state), the Supreme Court has held that a nonconsenting state is not subject to suit in federal court even when the suit is brought by a citizen of that very state. Moreover, the state's immunity from suit applies even if the suit is based on federal law. [footnotes omitted]

Statement of Professor Jonathan Siegel, Hearing on USERRA and Veterans Preference, Committee on Veterans' Affairs, Subcommittee on Education, Training, Employment, and Housing; Serial No. 104-23, at 85 (May 30, 1996)

As recently as 1989, the Supreme Court had upheld the Congress' power to make States subject to suit by citizens in Federal court when it was exercising its power under the Interstate Commerce Clause, Art. I, sec. 8, cl. 3. *Pennsylvania v. Union Gas Co.*, 491 U.S. 1 (1989), stating that the power to regulate interstate commerce would be "incomplete without the authority to render States liable in damages." *Id.* at 19-20. This view of Congress' power to create remedies for violation of Federal laws was widely assumed to be no more than a restatement of Congress' power under Article I. This view changed dramatically, however, when

the Supreme Court decided the case of *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 116 S. Ct. 1114 (1996). Briefly stated, the reasoning of *Seminole Tribe* is that:

Even when the Constitution vests in Congress complete law making authority over a particular area, the Eleventh Amendment prevents congressional authorization of suits by private parties against unconsenting States. [footnote omitted]. The Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction.

Id. at 1131

The Supreme Court has always held that the United States may bring an action in federal court against a State. Over the years, disputes over the meaning of the Eleventh Amendment have led the judiciary to recognize or create exceptions to the apparent bar on suits by individuals against States. Professor Siegel described these exceptions in his testimony.

- Actions to enforce the Fourteenth Amendment (which deals with illegal discrimination) may be brought by citizens against States.
- A 1908 Supreme Court decision permits citizen suits against state officials to require compliance with Federal law.

When the Committee on Veterans' Affairs first considered revising the law on Veterans Reemployment Rights (VRR) in 1991, it took note of numerous court decisions interpreting and upholding the law, which had its origins in a law enacted in 1940 in contemplation of the United States entry into what became known as World War II. Despite Supreme Court consideration of several cases arising under the VRR law, no State defendant had ever successfully argued that it was immune from the law under the Eleventh Amendment to the Constitution. Thus, the House Report accompanying the bill which eventually became Pub. L. No. 103-353, the Uniformed Services Employment and Reemployment Rights Act of 1994, did not deal at length with the provisions covering state employees. The intent of the bill under consideration in the 103d Congress, H.R. 995, was to restate, "clarify, simplify, and, where necessary, strengthen the existing veterans' employment and reemployment rights provisions". H. R. Rep. 65, 103d Cong., 1st Sess. 18 (Part I, to Accompany H.R. 995). Similarly, the House Report to accompany H.R. 1578, 102d Congress, a similar measure to revise reemployment rights passed by the House in 1991, noted that:

"[T]he courts have had no difficulty in finding an abrogation of state sovereign immunity under both the Tenth and Eleventh Amendments by virtue of the explicit language in current section 2022 (see *Jennings v. Illinois Office of Ed.* 589 F. 2d 935 (7th Cir. 1979); *Peel v. Florida Dept. of Transportation*, 600 F.2d 1070 (5th Cir. 1979)"

Given the lack of controversy surrounding the general subject of VRR, and the relatively good record of compliance by state agencies with the law as it existed at that time, it is not surprising to find

very little discussion in the 1991 and 1993 committee reports about the remedies available to state employees. In almost all respects, the former law and USERRA treat States in the same manner as private employers.

Today, section 4323(a) of title 38, United States Code, provides that after the Secretary of Labor has investigated and validated a complaint of violation of USERRA's provisions, the aggrieved person may request that the Attorney General commence an action for appropriate relief in an appropriate United States district court. This provision applies to persons employed by either a State or private employer. As an alternative to requesting that the Attorney General represent the person in an action brought in United States district court, or if the Attorney General refuses to provide such representation, the person may choose to commence an action in the same United States district court with private representation. In two reported instances, a State has successfully raised the Eleventh Amendment as a bar to such private actions against States under section 4323(a). *Velasquez v. Trustees of Indiana University*, No. IP 96-0557-C H/G (S.D. Ind. Feb. 6, 1998); *Palmatier v. Michigan Dept. of State Police*, 981 F. Supp. 529 (W.D. Mich. 1997). In both cases, U.S. district courts have cited the Supreme Court's sweeping decision in *Seminole Tribe* as the basis for their decisions holding that veterans may not bring individual actions against States in Federal court to enforce State compliance with USERRA, and that section 4323 as currently written exceeds Congress' constitutional authority.

These decisions threaten not only a long-standing policy protecting individuals' employment right, but also raise serious questions about the United States ability to provide for a strong national defense. Far more than in the days when the Constitution was being drafted, the peace enjoyed throughout much of the world is dependent on the responsive and powerful armed forces of the United States. Accordingly, to assure that the policy of maintaining a strong national defense is not inadvertently frustrated by States refusing to grant employees the rights afforded to them by USERRA, the committee is favorably reporting this legislation.

SECTION BY SECTION ANALYSIS

Section 1 of the reported bill would completely revise existing section 4323 of title 38, United States Code, which is captioned "Enforcement of rights with respect to a State or private employer."

Subsection (a)(1) of revised section 4323 contains all of the existing language of section 4323(a)(1) and adds a sentence that in the case of an action brought by the Attorney General to enforce the rights or benefits of a state employee, the action against the State shall be brought in the name of the United States.

Subsection (a)(2) is a slightly revised version of existing subsection (a)(2) which describes the conditions under which a person may commence an action without assistance from the Attorney General.

Subsection (b) specifies that United States district courts have jurisdiction over an action brought by the United States against a state or private employer and over actions brought against a pri-

vate employer by a person. Paragraph (2) would codify existing law that provides that state courts have jurisdiction to hear complaints brought by persons alleging that the State has violated USERRA.

Subsection (c) specifies the appropriate venue for such actions and revises without substantive change existing subsection (b).

Subsection (d) states the remedies available to persons bringing USERRA actions and is a restatement of remedies specified in existing subsection (c) of section 4323. Paragraph (2)(B) deals with compensation which may be paid to the United States and requires the Attorney General to pay the amount recovered to the person on whose behalf the action was brought.

Subsection (e) restates the provision contained in existing section 4323(c)(3) pertaining to the use of equity powers.

Subsection (f) restates the provision contained in existing section 4323(c)(4) delimiting who may bring an action under this chapter.

Subsection (g) restates the provision contained in existing section 4323(c)(5) defining what parties are necessary defendants in an action under this chapter.

Subsection (h) restates the provision contained in existing section 4323(c)(2) authorizing and restricting fees and court costs which may be awarded in an action under this chapter.

Subsection (i) restates the provision contained in existing section 4323(c)(6) pertaining to the inapplicability of state statutes of limitations in actions brought under this chapter.

Subsection (j) defines a private employer as including a political subdivision of a State. This definition is intended to preclude a defense of sovereign immunity which a political subdivision of a State may raise in an action brought under this chapter.

The revised section 4323 of title 38, United States Code, would apply to all actions commenced after the date of enactment of this Act, and would also apply to all actions in which no final decision has been made as of the date of enactment. A final action is one in which the prescribed period for the filing of an appeal of a lower court decision has expired and no appeal has been filed. Courts are directed to grant motions in pending actions against state employers to substitute the United States as the plaintiff instead of the person on whose behalf the United States brought the action.

Section 2 of the bill would revise the definition of "employee" presently found in section 4303(3) of title 38, United States Code, to clarify that it includes persons employed in a foreign country by an employer that is incorporated or otherwise organized in the United States or that is controlled by an entity organized in the United States. It would also add a new section 4319 to chapter 43 to clarify the liability of the controlling U.S. employer for violations of the law, to set out when an employer shall be considered to be covered by the law, and to exempt employers when compliance would cause the employer to violate the law of the foreign country in which the workplace is located.

Section 3 of the bill would amend section 4324(c) to clarify that the Merit Systems Protection Board has jurisdiction to hear complaints brought by Federal employees under section 4324 without regard as to when the complaint accrued.

OVERSIGHT FINDINGS

No oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

CONGRESIONAL BUDGET OFFICE COST ESTIMATE

The following letter was received from the Congressional Budget Office concerning the cost of the reported bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 11, 1998.

Hon. BOB STUMP,
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3213, a bill that addresses the enforcement and applicability of veterans' employment and reemployment rights.

If you wish further details on this estimate, we will be pleased to provide them. the CBO staff contact is Valerie Barton, who can be reached at 226-2840.

Sincerely,

JUNE E. O'NEILL,
Director

Enclosure

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 3213—A bill to amend title 38, United States Code, to clarify enforcement of veterans' employment and reemployment rights with respect to a State as an employer or a private employer, to extend veterans' employment and reemployment rights to members of the uniformed services employed abroad by U.S. companies, and for other purposes.

As ordered reported by the House Committee on Veterans' Affairs on March 11, 1998

SUMMARY. —H.R. 3213 would expand the scope of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to include certain employers in foreign countries, and would make certain procedural changes to the act's enforcement provisions in response to a recent Supreme Court decision.

CBO estimates that implementing H.R. 3213 would have no significant cost to the federal government. Because it could affect direct spending and receipts, pay-as-you-go procedures would apply, but any such effects would not be significant. the bill is excluded from consideration under the Unfunded Mandates Reform Act of 1995 (UMRA) because it is necessary for the national security.

ESTIMATED COST TO THE FEDERAL GOVERNMENT. —Implementing H.R. 3213 would raise costs of the Veterans' Employment and

Training Service (VETS) and the Merit Systems Protection Board (MSPB). However, CBO estimates that the additional costs would not be significant. The bill would also have an insignificant effect on direct spending and receipts.

USERRA authorized an eligible individual to bring an action against a state employer in federal district court for violations of the rights guaranteed under the act. However, in 1996 the Supreme Court held that the 11th Amendment to the U.S. Constitution precluded Congressionally authorized suits by private parties against unconsenting states (*Seminole Tribe of Florida v. The State of Florida*, 517 U.S. 44 (1996)). In order to ensure states' continuing adherence to the rights and protections afforded employees under USERRA and in response to the *Seminole* decision, H.R. 3213 would require the United States to be the plaintiff in any enforcement action against a state if the action alleges a violation of rights protected under USERRA. The bill would also subject U.S. employers in foreign countries to USERRA, thus increasing both the number of cases heard in district courts and the number of claims processed by VETS.

Based on information from VETS, CBO estimates that H.R. 3213 would not affect caseloads for VETS or district courts significantly because the current USERRA caseload is small and the marginal effects of the bill would be even smaller. In 1997, VETS investigated about 1,200 claims, and about five of those claims were taken to a district court.

The bill would also require MSPB to hear complaints against the federal government that were filed after enactment of USERRA but which were based on events occurring before its enactment. Under current law, MSPB does not hear any USERRA claims against a federal employer that accrued before October 13, 1994, the enactment date of USERRA. H.R. 3213 would require the MSPB to hear claims filed after that date, regardless of when the claim accrued. The MSPB hears about 60 USERRA claims each year at an average cost of \$2,500 per claim. CBO estimates that any backlog of claims would be small and that the costs of dealing with them would be insignificant.

PAY-AS-YOU-GO CONSIDERATIONS. —The bill would require the United States to be the plaintiff in any enforcement action against a state as an employer for violations of USERRA and, therefore, any monetary damages awarded would be revenues to the United States. The damages would be placed in a depository account and would be paid to the veteran harmed by the state's actions. These payments would be federal outlays and direct spending. CBO estimates that the deposits and payments to veterans would be small and offsetting in any given year, and that there would be no net impact on the deficit or surplus in any year.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT. —Section 4 of the Unfunded Mandates Reform Act (Public Law 104-4) excludes from consideration under that act any bill that is necessary for the national security. CBO has determined that H.R. 3213 fits within this exclusion. The bill would enforce the employment and reemployment rights of individuals currently in, or applying to be a member of, the uniformed services.

ESTIMATE PREPARED BY:
 Federal Costs: Valerie Barton
 Impact on State, Local, and Tribal Governments:
 Marc Nicole
 Impact on the Private Sector: Rachel Schmidt
 ESTIMATE APPROVED BY:
 Robert A. Sunshine, Deputy Assistant Director for Budget
 Analysis

INFLATIONARY IMPACT STATEMENT

The enactment of the reported bill would have no inflationary impact.

APPLICABILITY TO LEGISLATIVE BRANCH

Section 206 of the Congressional Accountability Act (Pub. L. No. 104–1) provides for Legislative Branch compliance with USERRA.

STATEMENT OF FEDERAL MANDATES

The reported bill would not establish a federal mandate under the Unfunded Mandates Reform Act, Pub. L. No. 104–4.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress’ power to “provide for the common Defence and general Welfare of the United States.”

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

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PART III—READJUSTMENT AND RELATED BENEFITS

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CHAPTER 43—EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

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SUBCHAPTER I—GENERAL

4301. Purposes; sense of Congress.

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SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT RIGHTS AND LIMITATIONS;
PROHIBITIONS

4311. Discrimination against persons who serve in the uniformed services and acts of reprisal prohibited.

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4319. *Employment and reemployment rights in foreign countries.*

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SUBCHAPTER I—GENERAL

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§ 4303. Definitions

For the purposes of this chapter—

(1) * * *

* * * * *

(3) The term “employee” means any person employed by an employer. *Such term includes any person who is a citizen, national, or permanent resident alien of the United States employed in a workplace in a foreign country by an employer that is an entity incorporated or otherwise organized in the United States or that is controlled by an entity organized in the United States, within the meaning of section 4319(c) of this title.*

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SUBCHAPTER II—EMPLOYMENT AND REEMPLOYMENT
RIGHTS AND LIMITATIONS; PROHIBITIONS

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§ 4319. *Employment and reemployment rights in foreign countries*

(a) *LIABILITY OF CONTROLLING U.S. EMPLOYER OF FOREIGN ENTITY.—If an employer controls an entity that is incorporated or otherwise organized in a foreign country, any denial of employment, reemployment, or benefit by such entity shall be presumed to be by such employer.*

(b) *INAPPLICABILITY TO FOREIGN EMPLOYER.—This subchapter does not apply to foreign operations of an employer that is a foreign person not controlled by an United States employer.*

(c) *DETERMINATION OF CONTROLLING EMPLOYER.—For the purpose of this section, the determination of whether an employer controls an entity shall be based upon the interrelations of operations, common management, centralized control of labor relations, and common ownership or financial control of the employer and the entity.*

(d) *EXEMPTION.—Notwithstanding any other provision of this subchapter, an employer, or an entity controlled by an employer, may—*

(1) *discriminate within the meaning of section 4311 of this title;*

(2) *deny reemployment rights within the meaning of section 4312, 4313, 4314, or 4315 of this title; or*

(3) *deny benefits within the meaning of section 4316, 4317, or 4318 of this title,*

with respect to an employee in a workplace in a foreign country, if compliance with any such section would cause such employer, or such entity controlled by an employer, to violate the law of the foreign country in which the workplace is located.

SUBCHAPTER III—PROCEDURES FOR ASSISTANCE, ENFORCEMENT, AND INVESTIGATION

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§ 4323. Enforcement of rights with respect to a State or private employer

[(a)(1) A person who receives from the Secretary a notification pursuant to section 4322(e) relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for appropriate relief for such person in an appropriate United States district court.

[(2) A person may commence an action for relief with respect to a complaint if that person—

[(A) has chosen not to apply to the Secretary for assistance under section 4322(a);

[(B) has chosen not to request that the Secretary refer the complaint to the Attorney General under paragraph (1); or

[(C) has been refused representation by the Attorney General with respect to the complaint under such paragraph.

[(b) In the case of an action against a State as an employer, the appropriate district court is the court for any district in which the State exercises any authority or carries out any function. In the case of a private employer the appropriate district court is the district court for any district in which the private employer of the person maintains a place of business.

[(c)(1)(A) The district courts of the United States shall have jurisdiction, upon the filing of a complaint, motion, petition, or other appropriate pleading by or on behalf of the person claiming a right or benefit under this chapter—

[(i) to require the employer to comply with the provisions of this chapter;

[(ii) to require the employer to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter; and

[(iii) to require the employer to pay the person an amount equal to the amount referred to in clause (ii) as liquidated damages, if the court determines that the employer's failure to comply with the provisions of this chapter was willful.

[(B) Any compensation under clauses (ii) and (iii) of subparagraph (A) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for in this chapter.

[(2)(A) No fees or court costs shall be charged or taxed against any person claiming rights under this chapter.

[(B) In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(2) who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.

[(3) The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of persons under this chapter.

[(4) An action under this chapter may be initiated only by a person claiming rights or benefits under this chapter, not by an employer, prospective employer, or other entity with obligations under this chapter.

[(5) In any such action, only an employer or a potential employer, as the case may be, shall be a necessary party respondent.

[(6) No State statute of limitations shall apply to any proceeding under this chapter.

[(7) A State shall be subject to the same remedies, including pre-judgment interest, as may be imposed upon any private employer under this section.]

§4323. Enforcement of rights with respect to a State or private employer

(a) *ACTION FOR RELIEF.*—(1) *A person who receives from the Secretary a notification pursuant to section 4322(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or a private employer may request that the Secretary refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may appear on behalf of, and act as attorney for, the person on whose behalf the complaint is submitted and commence an action for relief under this chapter for such person. In the case of such an action against a State (as an employer), the action shall be brought in the name of the United States as the plaintiff in the action.*

(2) *A person may commence an action for relief with respect to a complaint against a State (as an employer) or a private employer if the person—*

(A) has chosen not to apply to the Secretary for assistance under section 4322(a) of this title;

(B) has chosen not to request that the Secretary refer the complaint to the Attorney General under paragraph (1); or

(C) has been refused representation by the Attorney General with respect to the complaint under such paragraph.

(b) *JURISDICTION.*—(1) *In the case of an action against a State (as an employer) or a private employer commenced by the United States, the district courts of the United States shall have jurisdiction over the action.*

(2) *In the case of an action against a State (as an employer) by a person, the action may be brought in a State court of competent jurisdiction in accordance with the laws of the State.*

(3) *In the case of an action against a private employer by a person, the district courts of the United States shall have jurisdiction of the action.*

(c) *VENUE.—(1) In the case of an action by the United States against a State (as an employer), the action may proceed in the United States district court for any district in which the State exercises any authority or carries out any function.*

(2) *In the case of an action against a private employer, the action may proceed in the United States district court for any district in which the private employer of the person maintains a place of business.*

(d) *REMEDIES.—(1) In any action under this section, the court may award relief as follows:*

(A) *The court may require the employer to comply with the provisions of this chapter.*

(B) *The court may require the employer to compensate the person for any loss of wages or benefits suffered by reason of such employer's failure to comply with the provisions of this chapter.*

(C) *The court may require the employer to pay the person an amount equal to the amount referred to in subparagraph (B) as liquidated damages, if the court determines that the employer's failure to comply with the provisions of this chapter was willful.*

(2)(A) *Any compensation awarded under subparagraph (B) or (C) of paragraph (1) shall be in addition to, and shall not diminish, any of the other rights and benefits provided for under this chapter.*

(B) *In the case of an action commenced in the name of the United States for which the relief includes compensation awarded under subparagraph (B) or (C) of paragraph (1), such compensation shall be held in a special deposit account and shall be paid, on order of the Attorney General, directly to the person. If the compensation is not paid to the person because of inability to do so within a period of three years, the compensation shall be covered into the Treasury of the United States as miscellaneous receipts.*

(3) *A State shall be subject to the same remedies, including pre-judgment interest, as may be imposed upon any private employer under this section.*

(e) *EQUITY POWERS.—The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of persons under this chapter.*

(f) *STANDING.—An action under this chapter may be initiated only by a person claiming rights or benefits under this chapter under subsection (a) or by the United States under subsection (a)(1).*

(g) *RESPONDENT.—In any action under this chapter, only an employer or a potential employer, as the case may be, shall be a necessary party respondent.*

(h) *FEES, COURT COSTS.—(1) No fees or court costs may be charged or taxed against any person claiming rights under this chapter.*

(2) *In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(2) who obtained private counsel for such action or proceeding, the court may award any such person*

who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses.

(i) INAPPLICABILITY OF STATE STATUTE OF LIMITATIONS.—No State statute of limitations shall apply to any proceeding under this chapter.

(j) DEFINITION.—In this section, the term “private employer” includes a political subdivision of a State.

§ 4324. Enforcement of rights with respect to Federal executive agencies

(a)(1) * * *

* * * * *

(c)(1) The Merit Systems Protection Board shall adjudicate any complaint brought before the Board pursuant to subsection (a)(2)(A) or (b), *without regard as to whether the complaint accrued before, on, or after October 13, 1994*. A person who seeks a hearing or adjudication by submitting such a complaint under this paragraph may be represented at such hearing or adjudication in accordance with the rules of the Board.

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